## REMARKS

### Examiner Interview Summary

The undersigned would like to thank Examiner Shang for the courtesies extended in the personal interview conducted with the undersigned and Michael W. Zimmerman on August 27, 2008. The undersigned generally discussed the recitations of claim 1 with respect to the Williams, et al. (US 5,945,988) and Maissel, et al. (US P.G. Pub. 2003/0088872) references. While no specific agreement was reached, Examiner Shang indicated agreement with some points of differentiation between the above-referenced application and the prior art. The undersigned thanks Examiner Shang for his professionalism in advancing prosecution of the above-referenced patent application.

### Rejections of the Claims

The applicants have carefully considered the Office action dated June 12, 2008, and the references applied to the claims thereby. By way of this response, claims 3-5, 10-12, 14, 16-23, 48, 54, 56-64, 68, 77-78, 82-90, 96-97, 99-101, 103, 109-111, 114, 118-120, 122, 124-130, and 133 have been amended, and claims 1-2, 6-9, 13, 44, 46-47, 49-51, 53, 55, 70-75, 91-93, 98, 113, 116-117, 121, and 132 have been canceled without prejudice. New claims 194-212 have been added. The newly added claims 194-212 are supported at least by paragraphs [0008]-[0013], paragraphs [0034]-[0091], and Figures 2-8. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all pending claims are in condition for allowance and favorable reconsideration is respectfully requested.

**Rejections under 35 USC §103**

Turning to the art rejections, the Office action rejected claims 1-8, 10-23, 37-38, 41, 44, 46-51, 53, 68-69, 75-78, 82-93, 96-101, 105-122, and 126-193 in view of Williams et al. (US 5,945,988) and Maissel, et al. (US P.G. Pub. 2003/0088872). The Office action rejected claims 54-67, 103-104 and 124-125 as being unpatentable over Williams, Maissel, and further in view of Eldering et al. (U.S. Patent No. 6,457,010).

Claims 194, 200, 206

Independent claims 194, 200, and 206 recite, *inter alia*, determining a first viewing count of the number of times that the first audience member was logged in to the measurement apparatus, determining a second viewing count of the number of times that a second audience member was logged in to the measurement apparatus, and determining a first probability that the first audience member is in the audience based on the first viewing count and the second viewing count.

In general, audience measurement is concerned with the collection of audience member information useful to statistically determine the number and/or demographics of persons exposed to any types of content, such as television shows, commercials, movies, sporting events, etc. As such, a plurality of audience measurement systems located at respective ones of a plurality of audience measurement sites (e.g., households) records logs of audience members' consumption of content for which demographic information is desired. Because more than one person may be present in an audience of a program at any given time, some audience measurement systems allow more than one user to log in at a time.

The methods and apparatus described by Williams are directed to automatically determining and dynamically updating user preferences in an entertainment system. In a first embodiment described by Williams et al., an apparatus comprises a storage medium to store user preference information corresponding to at least a subset of a plurality of entertainment system users and a processor agent. The processor agent, communicatively coupled to the storage medium, is operative to monitor user interactions with the entertainment system and to automatically detect which one of the plurality of entertainment system users is currently using the entertainment system. (Williams Abstract).

Williams does not determine a first viewing count of the number of times that the first audience member was logged in to a measurement apparatus during the day part of one or more days prior to the monitored day, determine a second viewing count of the number of times that a second audience member was logged in to the measurement apparatus during the day part of the one or more days prior to the monitored day, or determine a probability that the first audience member is in the audience based on the first viewing count and the second viewing count as recited in claims 194, 200, and 206. While Williams may determine a user based on probability, Williams does not determine first and second viewing counts, and does not determine a probability for a first audience member based on the viewing counts.

Maissel is directed to an advanced television system. Maissel does not determine a first viewing count of the number of times that the first audience member was logged in to a measurement apparatus during the day part of one or more days prior to the monitored day, determine a second viewing count of the number of times that a

second audience member was logged in to the measurement apparatus during the day part of the one or more days prior to the monitored day, or determine a probability that the first audience member is in the audience based on the first viewing count and the second viewing count. Instead, Maissel describes "collecting viewing data from a multiplicity of viewers of a television system" (Maissel, paragraph [0093]), but does not describe a first viewing count for a first audience member, a second viewing count for a second audience member, and a probability based on the first and second viewing counts.

Eldering is similarly deficient. In particular, Eldering does not describe determining a first viewing count of the number of times that the first audience member was logged in to a measurement apparatus during the day part of one or more days prior to the monitored day, determining a second viewing count of the number of times that a second audience member was logged in to the measurement apparatus during the day part of the one or more days prior to the monitored day, or determining a probability that the first audience member is in the audience based on the first viewing count and the second viewing count. Instead, Eldering describes a client-server based subscriber characterization system. The system of Eldering monitors household demographic characteristics, and does not discuss the identities of individual viewers. Therefore, Eldering cannot describe a first viewing count of a first audience member or a second viewing count of a second audience member.

Because none of Williams, Maissel, or Eldering describes determining a first viewing count of the number of times that the first audience member was logged in to a measurement apparatus during the day part of one or more days prior to the monitored day, determining a second viewing count of the number of times that a second audience

member was logged in to the measurement apparatus during the day part of the one or more days prior to the monitored day, or determining a probability that the first audience member is in the audience based on the first viewing count and the second viewing count, no combination of these references can teach the recitations. In view of the foregoing remarks, it is respectfully submitted claims 194, 200, and 206, and all claims dependent therefrom, are patentable.

Claims 195, 201, 207

Claims 195, 201, and 207 further recite adding the first viewing count and the second viewing count to determine a total viewing count, wherein the first probability is based on the total viewing count. As mentioned above, none of Williams, Maissel, or Eldering describes a first viewing count of the number of times that the first audience member was logged in to a measurement apparatus during the day part of one or more days prior to the monitored day or a second viewing count of the number of times that a second audience member was logged in to the measurement apparatus during the day part of the one or more days prior to the monitored day. Therefore, none of Williams, Maissel, or Eldering can describe adding the first viewing count and the second viewing count to determine a total viewing count, because none of these references describe the first or second viewing counts. Further, since none of the references describe such a total viewing count, none of the references can describe wherein the first probability is based on the total viewing count. There is no combination of Williams, Maissel, and Eldering that can cure this deficiency.

Claims 197, 203, 209

Further to independent claims 194, 200, and 206, none of Williams, Maissel, or Eldering describes comparing the count of audience members to a number of audience members that are logged in to a measurement apparatus at the first location. Williams and Eldering do not describe determining a count of audience members. Maissel describes displaying "a proportion of an audience viewing a program" (Maissel, paragraphs [0078]-[0080]), but does not describe comparing the count of audience members to the number of logged-in audience members. Maissel uses the proportion of the audience viewing a program to provide on-screen alerts to viewers regarding programs that certain proportions of a wide audience are watching, which is not comparing the count of audience members to a number of audience members that are logged in to a measurement apparatus at the first location. Because none of Williams, Maissel, or Eldering describe comparing the count of audience members to a number of audience members that are logged in to a measurement apparatus at the first location, no combination thereof can cure this deficiency.

Claims 198, 204, 210

Even further to independent claims 194, 200, and 206, none of Williams, Maissel, or Eldering describes wherein the first viewing count is based on the number of times that the first audience member was logged in to a second measurement apparatus at a second location. In fact, the systems of Williams, Maissel, and Eldering are focused solely on a single apparatus to provide services to a user at a first location. Williams, Maissel, and Eldering do not determine a user at the location of a first apparatus based on a number of

times the user is logged in to another apparatus at a different location, and no combination of these references can teach these recitations.

Claim 212

Claim 212 recites, *inter alia*, determining an expected number of audience members based on historical tuning information for known audience members during corresponding day parts, and determining whether the expected number of audience members is greater than a first threshold. None of Williams, Maissel, or Eldering describes determining an expected number of audience members, much less determining an expected number of audience members based on historical tuning information during corresponding day parts, or determining whether the expected number of audience members is greater than a first threshold.

Williams is not concerned with an expected number of audience members present in an audience of a program, and certainly does not compare an expected number to a threshold. Rather, Williams is concerned with identifying a single active user and then activating the individual user's preferences. Only the preferences for that particular user may be operative at any given time. Additionally, Williams cannot be modified to expect a number of users, as Williams is directed to automatically determining and updating user preferences. Sets of user preferences are mutually exclusive by definition, as identical user preferences would eliminate the need for defining the preferences of individual users. After identifying the user (singular) of the system, Williams is not concerned with additional users, and cannot logically count the number of audience members or expect such a number of audience members. Therefore, Williams does not teach, and cannot be modified to teach, determining an expected number of audience members based on

historical tuning information for known audience members during corresponding day parts, and determining whether the expected number of audience members is greater than a first threshold.

Eldering is not concerned with the number of audience members present in the audience beyond identifying the demographics of a user or a household based on behavior. See Eldering, Abstract. Eldering does not describe determining an expected number of audience members or determining whether the expected number is greater than a first threshold. Maissel describes displaying "a proportion of an audience viewing a program" (Maissel, paragraphs [0078]-[0080]), but does not describe determining an expected number of audience members or determining whether the expected number is greater than a first threshold. Therefore, no combination of Williams, Maissel, and Eldering can teach claim 212.

Claims 182, 184, 186

Independent claims 182, 184, and 186 recite, *inter alia*, determining a count of audience members of a program being viewed at a first location, and determining a probability that an unidentified person is in the audience of the program when the count is different from a number of audience members recorded in a log of audience members for the program. Williams, Maissel, and Eldering are not concerned with the identities of additional members of the audience, so none of Williams, Maissel, or Eldering describe handling an unidentified person when the count of audience members of a program is different from a number of audience members recorded in a log of audience members for the program. Maissel describes displaying "a proportion of an audience viewing a program" (Maissel, paragraphs [0078]-[0080]), but does not describe determining a

probability that an unidentified person is in the audience of the program when the count is different from a number of audience members recorded in a log of audience members for the program. Because none of Williams, Maissel, or Eldering teaches the recitation, no combination thereof can teach such a claim. Thus, claims 182, 184, 186, and all claims dependent therefrom, are allowable.

Claims 188-193

Independent claims 188, 190 and 192 recite, among other things, logging-in a first audience member with a first audience identification based on a first probability, selectively providing a prompt for a second audience identification based on a second probability, and logging-in the second audience member based on the second audience identification, wherein the first and the second audience members may be logged into the audience at a first location at the same time. As described above in connection with independent claims 182, 184 and 186, none of Williams, Maissel, or Eldering is concerned with recording the identities of all members that are present in an audience of a program. Rather, Williams is concerned with identifying the single active user and then activating their individual user preferences. Eldering is similarly deficient. While Maissel describes displaying "a proportion of an audience viewing a program" *Id.*, Maissel does not describe wherein the first and the second audience members may be logged into the audience at a first location at the same time. Accordingly, claims 188, 190 and 192, and all claims depending therefrom, are in condition for allowance.

For at least the foregoing reasons, it is respectfully submitted all pending claims are in condition for allowance, and an indication thereof is respectfully requested. If the Examiner is of the opinion that a telephone conference would expedite the prosecution of

this case, the Examiner is invited to contact the undersigned attorney at the number identified below.

Respectfully submitted,

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